

**REMARKS:**

Claims 1-20 are currently pending in the subject Application.

Claims 1-6, 10-16, 19, and 20 stand rejected under 35 U.S.C. § 103(a) over U.S. Patent No. 6,012,046 to Lupien et al. (“*Lupien*”) in view of U.S. Publication No. 2001/0032162 A1 to Alsberg et al. (“*Alsberg*”).

Claim 7 stands rejected under 35 U.S.C. § 103(a) over *Lupien* in view of *Alsberg* and in further view of Official Notice.

Claims 8 and 9 stand rejected under 35 U.S.C. § 103(a) over *Lupien*, in view of *Alsberg*, in view of Official Notice, and in further view of U.S. Patent No. 6,408,282 to Buist (“*Buist*”).

Claims 17 and 18 stand rejected under 35 U.S.C. § 103(a) over *Lupien* in view of *Alsberg* and in further view of *Buist*.

Applicant respectfully submits that all of Applicant’s arguments and amendments are without *prejudice* or *disclaimer*. In addition, Applicant has merely discussed example distinctions from the cited prior art. Other distinctions may exist, and as such, Applicant reserves the right to discuss these additional distinctions in a future Response or on Appeal, if appropriate. Applicant further respectfully submits that by not responding to additional statements made by the Examiner, Applicant does not acquiesce to the Examiner’s additional statements. The example distinctions discussed by Applicant are considered sufficient to overcome the Examiner’s rejections. In addition, Applicant reserves the right to pursue broader claims in this Application or through a continuation patent application. No new matter has been added.

**REJECTION UNDER 35 U.S.C. § 103(a):**

Claims 1-6, 10-16, 19, and 20 stand rejected under 35 U.S.C. § 103(a) over *Lupien* in view of *Alsberg*.

Claim 7 stands rejected under 35 U.S.C. § 103(a) over *Lupien* in view of *Alsberg* and in further view of Official Notice.

Claims 8 and 9 stand rejected under 35 U.S.C. § 103(a) over *Lupien*, in view of *Alsberg*, in view of Official Notice, and in further view of *Buist*.

Claims 17 and 18 stand rejected under 35 U.S.C. § 103(a) over *Lupien* in view of *Alsberg* and in further view of *Buist*.

Applicant respectfully submits that the *amendment to independent Claim 1 has rendered moot the Examiner's rejection of these claims and the Examiner's arguments in support of the rejection of Applicant's claims*. Applicant further respectfully submits that amended independent Claim 1 in its current amended form contain unique and novel limitations that are not taught, suggested, or even hinted at in *Lupien* or *Alsberg*, either individually or in combination. Applicant respectfully submits that *Lupien* or *Alsberg*, either individually or in combination, fail to disclose, teach, or suggest each and every element of Claims 1-6, 10-16, 19, and 20.

Applicant further respectfully submits that *Lupien*, *Alsberg*, or the Examiner's Official Notice, either individually or in combination, fail to disclose, teach, or suggest each and every element of Claim 7. Applicant still further respectfully submits that *Lupien*, *Alsberg*, the Examiner's Official Notice, or *Buist*, either individually or in combination, fail to disclose, teach, or suggest each and every element of Claims 8 and 9. Applicant yet further respectfully submits that *Lupien*, *Alsberg*, or *Buist*, either individually or in combination, fail to disclose, teach, or suggest each and every element of Claims 17 and 18. Thus, Applicant respectfully traverses the Examiner's rejection of Claims 1-20 under 35 U.S.C. § 103(a) over the proposed combination of *Lupien*, *Alsberg*, the Examiner's Official Notice, and *Buist*, either individually or in combination.

### **The Proposed *Lupien-Alsberg-Buist-Official-Notice* Combination Fails to Disclose, Teach, or Suggest Various Limitations Recited in Applicant's Claims**

For example, with respect to independent Claim 1, this claim recites:

*A system for generating a display of at least one side of a market*, the system comprising a computer system having one or more computers and operable to:

receive market data reflecting one or more offers, from a plurality of market participants, each offer comprising at least an offered price and an offered quantity;

*generate a plurality of offer bars representing the one or more offers from the plurality of market participants*, each of the plurality of offer bars divided into one or more bar segments, each bar segment corresponding to a particular offer from a particular market participant, wherein each bar segment is prioritized according to a prioritization scheme;

*generate a display of the plurality of offer bars*, the display comprising a price axis and a quantity axis, placement of each of the plurality of an offer bars along the price axis representing the offered prices for the one or more offers represented by each of the plurality of offer bars, height of each of the plurality of offer bars relative to the quantity axis representing an aggregate offered quantity for the one or more offers represented by each of the plurality of offer bars;

access an average price specified by a user;

calculate an offered quantity available at the specified average price *based on the received market data*; and

*indicate the calculated offered quantity within the display of the received market data.* (Emphasis Added).

In addition, *Lupien, Alsberg, Buist*, or the Examiner's Official Notice, either individually or in combination, fails to disclose each and every limitation of independent Claims 10-14, 19, and 20.

Applicant respectfully submits that the proposed combination of *Lupien* or *Alsberg*, either individually or in combination, fails to disclose, teach, or suggest independent Claim 1 limitations regarding a "*system for generating a display of at least one side of a market*" and in particular the proposed combination of *Lupien* or *Alsberg*, either individually or in combination, fails to disclose, teach, or suggest independent Claim 1 limitations regarding "*generating] a plurality of offer bars representing the one or more offers from the plurality of market participants*", each of the plurality of offer bars divided into one or more bar segments, each bar segment corresponding to a particular offer from a particular market participant, wherein each bar segment is prioritized according to a prioritization scheme".

Applicant further respectfully submits that *Lupien* fails to disclose, teach, or suggest independent Claim 1 limitations regarding a "*generating] a display of the plurality of offer bars*", the display comprising a price axis and a quantity axis, placement of each of the plurality of an offer bars along the price axis representing the offered prices for the one or more offers represented by each of the plurality of offer bars, height of each of the plurality of offer bars relative to the quantity

axis representing an aggregate offered quantity for the one or more offers represented by each of the plurality of offer bars”.

In fact, as discussed below in more detail, the Examiner acknowledges that *Lupien* fails to teach “*receiv[ing] market data reflecting the one or more offers*”, from one or more market participants, each offer comprising at least an offered price and an offered quantity”. (17 March 2008 Final Office Action, Page 3). (Emphasis Added). In particular, the Examiner states:

Lupien et al. does not teach:

receive market data reflecting the one or more offers, from one or more market participants, each offer comprising at least an offered price and an offered quantity;

indicate the calculated offered quantity within the display of the received market data.

(17 March 2008 Final Office Action, Page 3). Thus, *Lupien* cannot provide for “*generat[ing] a display of the plurality of offer bars*”, the display comprising a price axis and a quantity axis, placement of each of the plurality of an offer bars along the price axis representing the offered prices for the one or more offers represented by each of the plurality of offer bars, height of each of the plurality of offer bars relative to the quantity axis representing an aggregate offered quantity for the one or more offers represented by each of the plurality of offer bars”, because as acknowledged by the Examiner, *Lupien* fails to teach “*receiv[ing] market data reflecting the one or more offers*”. Applicant respectfully requests the Examiner to verify the references to *Lupien*, to ensure that some mistake has not been made.

In addition, Applicant further respectfully submits that *Lupien* fails to disclose, teach, or suggest independent Claim 1 limitations regarding “calculate[ing] an offered quantity available at the specified average price *based on the received market data*”, because, as discussed and acknowledged by the Examiner, *Lupien* fails to teach “*receiv[ing] market data reflecting the one or more offers*”, from one or more market participants, each offer comprising at least an offered price and an offered quantity”. (17 March 2008 Final Office Action, Page 3). (Emphasis Added). Thus, *Lupien* cannot provide for “calculate[ing] an offered quantity available at the specified average price *based on the received market data*”, since as acknowledged by the Examiner, *Lupien* fails to teach “*receiv[ing] market data reflecting the one or more offers*”. Thus, Applicant respectfully submits

that the equations forming the foundation of the Examiner's comparison between *Lupien* and independent Claim 1 cannot be made. Applicant further respectfully submits that these distinctions alone are sufficient to patentably distinguish independent Claim 1 from the proposed combination of *Lupien*.

### **The Office Action Acknowledges that *Lupien* Fails to Disclose Various Limitations Recited in Applicants Claims**

Applicant respectfully submits that the Office Action acknowledges, and Applicant agrees, that *Lupien* fails to disclose various limitations recited in independent Claim 1. Specifically the Examiner acknowledges that *Lupien* fails to teach "receiv[ing] market data reflecting the one or more offers, from one or more market participants, each offer comprising at least an offered price and an offered quantity" and "*indicat[ing] the calculated offered quantity within the display of the received market data*". (17 March 2008 Final Office Action, Page 3). However, the Examiner asserts that the cited portions of *Alsberg* disclose the acknowledged shortcomings in *Lupien*. Applicants respectfully traverse the Examiner's assertions regarding the subject matter disclosed in *Alsberg*.

Applicant respectfully submits that *Alsberg* fails to disclose, teach, or suggest independent Claim 1 limitations regarding a "*system for generating a display of at least one side of a market*" and in particular *Alsberg* fails to disclose, teach, or suggest independent Claim 1 limitations regarding "*receiv[ing] market data reflecting one or more offers, from one or more market participants, each offer comprising at least an offered price and an offered quantity*". In particular, the Examiner states:

Alsberg et al. teaches:

receive market data reflecting the one or more offers, from one or more market participants, each offer comprising at least an offered price and an offered quantity (see Fig. 1 and 3; ¶ 0096);

(17 March 2008 Final Office Action, Pages 3-4). By contrast, the cited portion of *Alsberg* on which the Examiner relies does not disclose a "*system for generating a display of at least one side of a market*" and in particular *Alsberg* fails to disclose, teach, or suggest independent Claim 1 limitations regarding "*receiv[ing] market data reflecting one or more offers, from one or more*

*market participants, each offer comprising at least an offered price and an offered quantity*”, as recited in independent Claim 1.

For example, the Examiner appears to be equating “*receiv[ing] market data*” recited in independent Claim 1 with a “*data structure 322*” disclosed in *Alsberg*. (17 March 2008 Final Office Action, Page 3). Applicant respectfully submits that this equation is inaccurate, that is the *data structure 322* disclosed in *Alsberg* is merely a block diagram illustrating the components of an offer, that is an offer, as defined by *Alsberg*, but *does not include, involve, or even relate to receiving market data*, as recited in independent Claim 1. (Figure 3, Paragraph [0096]). In contrast, “*receiv[ing] market data*” recited in independent Claim 1 *reflects one or more offers, from one or more market participants, each offer comprising at least an offered price and an offered quantity*. Thus, Applicant respectfully submits that the equations forming the foundation of the Examiner’s comparison between *Alsberg* and independent Claim 1 cannot be made. Applicant further respectfully submits that these distinctions alone are sufficient to patentably distinguish independent Claim 1 from *Alsberg*.

In addition, the Examiner states:

Alsberg et al. teaches:

\* \* \*

indicate the calculated offered quantity within the display of the received market data (¶ 0174; Fig. 23).

Therefore, it would be *prima facie* obvious to one of ordinary skill in the art at the time the invention was made to add receive market data reflecting the one or more offers, from one or more market participants, each offer comprising at least an offered price and an offered quantity and indicate the calculated offered quantity within the display of the received market data feature to the system of Lupien et al. because Alsberg et al. teaches that the feature helps to generate accurate real-time valuable marketplace information (¶ 0002).

(17 March 2008 Final Office Action, Pages 3-4). By contrast, the cited portion of *Alsberg* on which the Examiner relies does not disclose a “*system for generating a display of at least one side of a market*” and in particular *Alsberg* fails to disclose, teach, or suggest independent Claim 1 limitations regarding “*indicat[ing] the calculated offered quantity within the display of the received market data*”, as recited in independent Claim 1.

For example, the Examiner appears to be equating “*indicating the calculated offered quantity*” recited in independent Claim 1 with “*if the price is lockable*” disclosed in *Lupien*. (17 March 2008 Final Office Action, Page 3). Applicant respectfully submits that this equation is inaccurate, that is *the determination of whether the price is lockable that is disclosed in Alsberg* is merely a determination if the price is not lockable, that is that the price cannot lock, but *does not include, involve, or even relate to indicating the calculated offered quantity*, as recited in independent Claim 1. (Paragraph [0174]). In contrast, “*indicating the calculated offered quantity*” recited in independent Claim 1 *is provided for indicating the calculated offered quantity within the display of the received market data*. Thus, Applicant respectfully submits that the equations forming the foundation of the Examiner’s comparison between *Alsberg* and independent Claim 1 cannot be made. Applicant further respectfully submits that these distinctions alone are sufficient to patentably distinguish independent Claim 1 from *Alsberg*.

### **The Examiner’s *Official-Notice* is improper under MPEP § 2144.03**

Applicant respectfully submits that Applicant is confused as to what the Examiner teaches by the Official Notice or even to the extent in which the Examiner is taking Official Notice. Applicant respectfully requests clarification as to the subject matter for which Official Notice is being taken. *Applicant respectfully traverses the Official Notice because the asserted facts*, as best understood by Applicant, *are not supported by substantial documentary evidence or any type of documentary evidence* and appear to be the Examiner’s opinions formulated using the subject Application as a template, which constitutes impermissible use of hindsight. Furthermore, under these circumstances, it is inappropriate for the Examiner to take Official Notice without documentary evidence to support the Examiner’s conclusion. (See MPEP § 2144.03). *Applicant respectfully requests the Examiner to produce authority for the Examiner’s Official Notice.*

Only “in limited circumstances,” is it “appropriate for an examiner to take official notice of facts not in the record or to rely on common knowledge in making a rejection”. (MPEP § 2144.03). “Official notice unsupported by documentary evidence *should only be taken by the examiner* where the facts asserted to be well-known, or to be common knowledge in the art are *capable of instant and unquestionable demonstration as being well-known*.

With respect to the subject Application, the Examiner's statement that the "Official Notice is taken that access seller/participant list and adjust offer is old and well established in the business of market information as a convenient way for buyer or seller or participant to obtain updated market information", ***is not capable of instant and unquestionable demonstration as being well-known.*** (17 March 2008 Final Office Action, Pages 14-15). As noted by the court in *In re Ahlert*, 424 F.2d 1088, 1091, 165 USPQ 418, 420 (CCPA 1970), the notice of facts beyond the record which may be taken by the examiner must be '***capable of such instant and unquestionable demonstration as to defy the dispute***' (citing *In re Knapp Monarch Co.*, 296 F.2d 230, 132 U.S.P.Q. 6 (C.C.P.A. 1961))." (MPEP § 2144.03(A)). (Emphasis Added).

"It is ***never appropriate to rely solely on "common knowledge" in the art without evidentiary support in the record***, as the principal evidence upon which a rejection was based. *Zurko*, 258 F.3d at 1385, 59 USPQ2d at 1697. As the court held in *Zurko*, an assessment of basic knowledge and common sense that is not based on any evidence in the record lacks substantial evidence support. *Id.* at 1385, 59 USPQ2d at 1697. See also *In re Lee*, 277 F.3d 1338, 1344-45, 61 USPQ2d 1430, 1434-35 (Fed. Cir. 2002)." (MPEP § 2144.03(A)).

"Ordinarily, there must be some form of evidence in the record to support an assertion of common knowledge. See *Lee*, 277 F.3d at 1344-45, 61 USPQ2d at 1434-35 (Fed. Cir. 2002); *Zurko*, 258 F.3d at 1386, 59 USPQ2d at 1697 (holding that ***general conclusions concerning what is "basic knowledge" or "common sense" to one of ordinary skill in the art without specific factual findings and some concrete evidence in the record to support these findings will not support an obviousness rejection***). The examiner must provide specific factual findings predicated on sound technical and scientific reasoning to support his or her conclusion of common knowledge. See *Soli*, 317 F.2d at 946, 37 USPQ at 801; *Chevenard*, 139 F.2d at 713, 60 USPQ at 241. Applicant should be presented with the explicit basis on which the examiner regards the matter as subject to official notice and be allowed to challenge the assertion in the next reply after the Office action in which the common knowledge statement was made." (MPEP § 2144.03(B)). (Emphasis Added).

Applicant respectfully submits that the Office Action provides no documentary evidence to support the Official Notice taken by the Examiner, yet the asserted facts are not capable of "instant and unquestionable" demonstration as being well-known. Applicant further respectfully submits

that Applicant has adequately traversed the Examiners assertion of Official Notice and direct the Examiner's attention to the pertinent text of the MPEP, which states:

If applicant adequately traverses the examiner's assertion of official notice, the examiner must provide documentary evidence in the next Office action if the rejection is to be maintained. See 37 CFR 1.104(c)(2). See also *Zurko*, 258 F.3d at 1386, 59 USPQ2d at 1697 ("[T]he Board [or examiner] must point to some concrete evidence in the record in support of these findings" to satisfy the substantial evidence test). If the examiner is relying on personal knowledge to support the finding of what is known in the art, the examiner must provide an affidavit or declaration setting forth specific factual statements and explanation to support the finding. See 37 CFR 1.104(d)(2). (MPEP § 2144.03(C)).

Thus, if the Examiner continues to maintain the rejection of Claims 7-8 based on the Official Notice, Applicant respectfully requests that the Examiner provide documentary evidence as necessitated by MPEP § 2144.03(C). Furthermore, if the Examiner is relying on personal knowledge to support the finding of what is known in the art, Applicant further respectfully requests that the Examiner provide an affidavit or declaration setting forth specific factual statements and explanation to support the finding as further necessitated by MPEP § 2144.03(C).

**The Office Action Fails to Properly Establish a *Prima Facie* case of Obvious over the Proposed *Lupien-Alsberg-Buist-Official-Notice* Combination According to the UPSTO Examination Guidelines**

Applicant respectfully submits that the Office Action fails to properly establish a *prima facie* case of obviousness based on the proposed combination of *Lupien*, *Alsberg*, *Buist*, and the Examiner's Official Notice, either individually or in combination, and in particular, the Office Action fails to establish a *prima facie* case of obviousness based on the "Examination Guidelines for Determining Obviousness Under 35 U.S.C. 103 in View of the Supreme Court Decision in *KSR International Co. v. Teleflex Inc.*." (the "Guidelines").

As reiterated by the Supreme Court in *KSR International Co. v. Teleflex Inc.* (*KSR*), the framework for the objective analysis for determining obviousness under 35 U.S.C. 103 is stated in *Graham v. John Deere Co.* (383 U.S. 1, 148 USPQ 459 (1966)). Obviousness is a question of law

based on underlying factual inquiries. These factual inquiries enunciated by the Court are as follows:

- (1) Determining the scope and content of the prior art;
- (2) Ascertaining the differences between the claimed invention and the prior art; and
- (3) Resolving the level of ordinary skill in the pertinent art.

(Notice, 72 Fed. Reg. 57527 (Oct. 10, 2007)). Objective evidence relevant to the issue of obviousness must be evaluated by Office personnel. (383 U.S. 17–18, 148 USPQ 467 (1966)). As stated by the Supreme Court in *KSR*, “While the sequence of these questions might be reordered in any particular case, the [*Graham*] factors continue to define the inquiry that controls.” (*KSR*, 550 U.S. at \_\_, 82 USPQ2d at 1391).

However, it is important to note that the Guidelines require that Office personnel “*ensure that the written record includes findings of fact* concerning the state of the art and the teachings of the references applied. (Notice, 72 Fed. Reg. 57527 (Oct. 10, 2007)). In addition, the Guidelines remind Office personnel that the “*factual findings made by Office personnel are the necessary underpinnings to establish obviousness.*” (*id.*). Further, “*Office personnel must provide an explanation to support an obviousness rejection* under 35 U.S.C. 103. (*id.*). In fact, “35 U.S.C. 132 requires that Applicant be notified of the reasons for the rejection of the claim so that he or she can decide how best to proceed” and “clearly setting forth findings of fact and the rationale(s) to support a rejection in an Office action leads to the prompt resolution of issues pertinent to patentability.” (*id.*).

With respect to the subject application, the Office Action has not shown the *factual findings necessary to establish obviousness* or even *an explanation to support the obviousness rejection* based on the proposed combination of *Lupien*, *Alsberg*, *Buist*, and the Examiner’s Official Notice. The Office Action merely states that “it would be *prima facie* obvious to one of ordinary skill in the art at the time the invention was made to add [...] the acknowledged shortcomings of *Lupien*] to the system of *Lupien*”. (17 March 2008 Final Office Action, Page 4). Applicant respectfully disagrees and respectfully submits that the Examiner’s conclusory statement is not sufficient to establish the *factual findings necessary to establish obviousness* and is not a sufficient *explanation to support*

*the obviousness rejection* based on the proposed combination of *Lupien, Alsberg, Buist*, and the Examiner’s Official Notice.

The Guidelines further provide guidance to Office personnel in “determining the scope and content of the prior art” such as, for example, “Office personnel must first obtain a thorough understanding of the invention disclosed and claimed in the application.” (Notice, 72 Fed. Reg. 57527 (Oct. 10, 2007)). The scope of the claimed invention must be clearly determined by giving the claims the “broadest reasonable interpretation consistent with the specification.” (See *Phillips v. AWH Corp.*, 415 F.3d 1303, 1316, 75 USPQ2d 1321, 1329 (Fed. Cir. 2005) and MPEP § 2111.). In addition, the Guidelines state that any “*obviousness rejection should include*, either explicitly or implicitly in view of the prior art applied, *an indication of the level of ordinary skill.*” (Notice, 72 Fed. Reg. 57528 (Oct. 10, 2007)). With respect to the subject Application, the Office Action has not provided *an indication of the level of ordinary skill*.

The Guidelines still further provide that once the *Graham* factual inquiries are resolved, Office personnel must determine whether the claimed invention would have been obvious to one of ordinary skill in the art. (*Id.*). For example, the Guidelines state that *Office personnel must explain why the difference(s) between the prior art and the claimed invention would have been obvious to one of ordinary skill in the art.* (*Id.*). In addition, the Guidelines state that the proper analysis is *whether the claimed invention would have been obvious to one of ordinary skill in the art after consideration of all the facts.* (*Id.* and See 35 U.S.C. 103(a)).

With respect to the subject Application, the Office Action has not expressly resolved any of the *Graham* factual inquiries to determine whether Applicant’s invention would have been obvious to one of ordinary skill in the art. In addition, the Office Action fails to *explain why the difference(s) between the proposed combination of Lupien, Alsberg, Buist, the Examiner’s Official Notice, and Applicant’s claimed invention would have been obvious to one of ordinary skill in the art.* The Office Action merely states that “because *Alsberg* teaches that the feature helps to generate accurate real-time valuable marketplace information”. (17 March 2008 Final Office Action, Page 4). Applicant respectfully disagrees and further respectfully requests clarification as to how this statement *explains why the difference(s) between the proposed combination of Lupien, Alsberg, Buist, the Examiner’s Official Notice and Applicant’s claimed invention would have*

*been obvious to one of ordinary skill in the art.* Applicant further respectfully submits that the Examiner is using the subject Application as a template to formulate reconstructive hindsight, which constitutes impermissible use of hindsight under 35 U.S.C. § 103(a).

The Guidelines yet further state that the “key to supporting any rejection under 35 U.S.C. 103 is the *clear articulation of the reason(s) why the claimed invention would have been obvious.*” (Notice, 72 Fed. Reg. 57528 (Oct. 10, 2007)). In fact, the Supreme Court in *KSR* noted that “*the analysis supporting a rejection under 35 U.S.C. 103 should be made explicit.*” (*id.*). The Court quoting *In re Kahn* (441 F.3d 977, 988, 78 USPQ2d 1329, 1336 (Fed. Cir. 2006)), stated that “[R]ejections on *obviousness cannot be sustained by mere conclusory statements*; instead, there *must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness.*” (*KSR*, 550 U.S. at \_\_, 82 USPQ2d at 1396). The Guidelines provide the following seven rationales:

- (A) Combining prior art elements according to known methods to yield predictable results;
- (B) Simple substitution of one known element for another to obtain predictable results;
- (C) Use of known technique to improve similar devices (methods, or products) in the same way;
- (D) Applying a known technique to a known device (method, or product) ready for improvement to yield predictable results;
- (E) “Obvious to try”—choosing from a finite number of identified, predictable solutions, with a reasonable expectation of success;
- (F) Known work in one field of endeavor may prompt variations of it for use in either the same field or a different one based on design incentives or other market forces if the variations would have been predictable to one of ordinary skill in the art;
- (G) Some teaching, suggestion, or motivation in the prior art that would have led one of ordinary skill to modify the prior art reference or to combine prior art reference teachings to arrive at the claimed invention.

Applicant respectfully submits that the *Office Action fails to provide any articulation, let alone, clear articulation of the reasons why Applicants claimed invention would have been obvious.* For example, the *Examiner has not adequately supported the selection and combination of Lupien, Alsberg, Buist, and the Examiner’s Official Notice to render obvious Applicant’s claimed invention.* The Examiner’s unsupported conclusory statements that “it would be prima

facie obvious to one of ordinary skill in the art at the time the invention was made to add [... the acknowledged shortcomings of *Lupien*] to the system of *Lupien*” and “because *Alsberg* teaches that the feature helps to generate accurate real-time valuable marketplace information”, ***does not adequately provide clear articulation of the reasons why Applicants claimed invention would have been obvious.*** (17 March 2008 Final Office Action, Page 4). In addition, the Examiner’s unsupported conclusory statement fails to meet any of the Guidelines rationales to render obvious Applicants claimed invention.

Thus, if the Examiner continues to maintain the obvious rejection based on the proposed combination of *Lupien*, *Alsberg*, *Buist*, and the Examiner’s Official Notice, ***Applicant respectfully requests that the Examiner provide proper support for the obviousness rejection under 35 U.S.C. 103 as necessitated by the Guidelines, including a statement by the Examiner identifying which one of the seven rationales the Examiner is relying on and the proper analysis of that particular rationale, as required by the Guidelines.***

#### **Applicant’s Claims are Patentable over the Proposed *Lupien-Alsberg-Buist-Official-Notice* Combination**

Applicant respectfully submits that independent Claims 1, 10-14, 19, and 20 are considered patentably distinguishable over the proposed combination of *Lupien*, *Alsberg*, *Buist*, and the Examiner’s Official Notice. This being the case, independent Claims 1, 10-14, 19, and 20 are considered patentably distinguishable over the proposed combination of *Lupien*, *Alsberg*, *Buist*, and the Examiner’s Official Notice.

With respect to dependent Claims 2-9 and 15-18: Claims 2-9 depend from independent Claim 1 and Claims 15-18 depend from independent Claim 14. As mentioned above, each of independent Claims 1, 10-14, 19, and 20 are considered patentably distinguishable over *Lupien*, *Alsberg*, *Buist*, and the Examiner’s Official Notice. Thus, dependent Claims 2-9 and 15-18 are considered to be in condition for allowance for at least the reason of depending from an allowable claim.

For at least the reasons set forth herein, Applicant respectfully submits that Claims 1-20 are not rendered obvious by the proposed combination of *Lupien*, *Alsberg*, *Buist*, and the Examiner’s

Official Notice. Applicant further respectfully submits that Claims 1-20 are in condition for allowance. Thus, Applicant respectfully requests that the rejection of Claims 1-20 under 35 U.S.C. § 103(a) be reconsidered and that Claims 1-20 be allowed.

**CONCLUSION:**

In view of the foregoing remarks, this application is considered to be in condition for allowance, and early reconsideration and a Notice of Allowance are earnestly solicited.

A Request for Continued Examination (RCE) is being filed electronically herewith to facilitate the processing of this deposit account authorization. **The Director is hereby authorized to charge the \$810.00 RCE fee to Deposit Account No. 500777.** Although Applicant believes no additional fees are deemed to be necessary; the undersigned hereby authorizes the Director to charge any additional fees which may be required, or credit any overpayments, to **Deposit Account No. 500777.** If an extension of time is necessary for allowing this Response to be timely filed, this document is to be construed as also constituting a Petition for Extension of Time Under 37 C.F.R. § 1.136(a) to the extent necessary. Any fee required for such Petition for Extension of Time should be charged to **Deposit Account No. 500777.**

**Please link this application to Customer No. 53184 so that its status may be checked via the PAIR System.**

Respectfully submitted,

17 June 2008

Date

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